UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES T. SAMMONS, JR.,

Plaintiff,

v.

Case No. 05-72841
Honorable Patrick J. Duggan

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
_____/

OPINION AND ORDER

At a session of said Court, held in the U.S. District Courthouse, Eastern District of Michigan, on August 14, 2006.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff applied for Social Security Disability Insurance Benefits ("DIB") and Supplemental Security Income benefits ("SSI") (collectively "benefits") in September 2001, alleging that he became disabled on February 2, 2000, approximately one month before his 44th birthday, due to a seizure disorder. The Social Security Administration denied Plaintiff's request for benefits initially. Upon Plaintiff's request, Administrative Law Judge ("ALJ") James N. Gramenos conducted a *de novo* hearing on March 24, 2004. The ALJ issued a decision on March 22, 2005, finding Plaintiff not disabled within the meaning of the Social Security Act and therefore not entitled to benefits. The ALJ's

decision became the final decision of the Social Security Commissioner ("Commissioner") when the Social Security Appeals Council denied review. Plaintiff thereafter initiated the pending action.

Both parties have filed motions for summary judgment, which this Court referred to Magistrate Judge Steven D. Pepe. On May 31, 2006, Magistrate Judge Pepe filed his Report and Recommendation (R&R) recommending that this Court deny Plaintiff's motion for summary judgment and grant Defendant's motion. At the conclusion of the R&R, Magistrate Judge Pepe advises the parties that they may object and seek review of the R&R within ten days of service upon them. Plaintiff filed objections to the R&R on June 11, 2006.

STANDARD OF REVIEW

Under 42 U.S.C. Section 405(g):

> Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party . . . may obtain a review of such decision by a civil action . . . The court shall have the power to enter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by *substantial evidence*, shall be conclusive . . .

42 U.S.C. § 405(g)(emphasis added); *see Boyes v. Sec'y of Health and Human Servs.*, 46 F.3d 510, 511-12 (6th Cir. 1994). "Substantial evidence is defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Abbott v. Sullivan*, 905 F.2d 918, 922-23 (6th Cir. 1990)(quoting *Richardson v. Perales*,

402 U.S. 389, 401, 91 S. Ct. 1420, 1427 (1971)). The Commissioner's findings are not subject to reversal because substantial evidence exists in the record to support a different conclusion. *Mullen v. Brown*, 800 F.2d 535, 545 (6th Cir. 1986)(citing *Baker v. Kechler*, 730 F.2d 1147, 1150 (8th Cir. 1984)). If the Commissioner's decision is supported by substantial evidence, a reviewing court must affirm. *Studaway v. Sec'y of Health and Human Servs.*, 815 F.2d 1074, 1076 (6th Cir. 1987).

The court reviews *de novo* the parts of an R&R to which a party objects. *See* FED. R. CIV. P. 72(b); *Thomas v. Halter*, 131 F. Supp. 2d 942, 944 (E.D. Mich. 2001).

ANALYSIS

An ALJ considering a disability claim is required to follow a five-step process to **e**valuate the claim. 20 C.F.R. § 404.1520(a)(4). If the ALJ determines that the claimant is disabled or not disabled at a step, the ALJ need not proceed further. *Id*. However, if the ALJ does not find that the claimant is disabled or not disabled at a step, the ALJ must proceed to the next step. *Id*. "The burden of proof is on the claimant through the first four steps . . . If the analysis reaches the fifth step without a finding that the claimant is not disabled, the burden transfers to the [defendant]." *Preslar v. Sec'y of Health and Human Servs.*, 14 F.3d 1107, 1110 (6th Cir. 1994); *see also Bowen v. Yuckert*, 482 U.S. 137, 146 n.5, 107 S. Ct. 2287, 2294 n.5 (1987).

The ALJ's five-step sequential process is as follows:

1. At the first step, the ALJ considers whether the claimant is currently

engaged in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i).[1]

2. At the second step, the ALJ considers whether the claimant has a severe medically determinable physical or mental impairment that meets the duration requirement of the regulations and which significantly limits the claimant's ability to do basic work activities. 20 C.F.R. §§ 404.1520(a)(4)(ii) and (c).[2]

3. At the third step, the ALJ again considers the medical severity of the claimant's impairment to determine whether the impairment meets or equals an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. § 404.1520(a)(4)(iii). If the claimant's impairment meets any Listing, he or she is determined to be disabled regardless of other factors.[3] *Id*.

4. At the fourth step, the ALJ assesses the claimant's residual functional capacity and past relevant work to determine whether the claimant can perform his or her past relevant work.[4] 20 C.F.R. § 404.1520(a)(4)(iv).

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[1]The ALJ concluded that Plaintiff has not engaged in substantial gainful activity since February 2, 2000. (A.R. at 31.)

[2]The ALJ concluded that Plaintiff has a severe seizure disorder and substance abuse disorder, exacerbated by alcoholic substance abuse. (A.R. at 31.)

[3]The ALJ analyzed whether Plaintiff met Listings 11.02 and 12.09 and determined that, if Plaintiff had not abused alcoholic beverages, he would not meet, or medically equal, any of the listed impairments. *(*A.R. at 31.)

[4]The ALJ found that, absent his utilization of alcoholic beverages, Plaintiff would have the following residual functional capacity:

> perform unskilled, light work activity; avoid areas of unprotected heights, scaffolding, moving machinery, ladders; eliminate jobs that would require a worker to function in work areas with unprotected holes in the ground and/or open pits; and to eliminate jobs that would require as a job duty the direct contract with the general public when performing work activity.

(A.R. at 28.) The ALJ concluded that Plaintiff is unable to perform any of his past relevant work. (*Id*. at 31.)

5. At the fifth step, the ALJ considers the claimant's residual functional capacity, age, education, and past work experience to see if he can do other work. 20 C.F.R. § 404.1420(a)(4)(v). If there is no such work that the claimant can perform, the ALJ must find that he or she is disabled.[5] *Id*.

Plaintiff raises a number of objections to the R&R. First, he claims that the ALJ failed to give proper weight to the opinion of one of his treating physicians, Dr. A.S. "Nash" Khattar, that Plaintiff continued to have seizures even after discontinuing his consumption of alcohol. Second, Plaintiff claims the ALJ erroneously disregarded the opinion of Dr. Syed Iqbal, an agency physician, that Plaintiff meets the requirements of Listings 12.09 and 11.02A. Third, and finally, Plaintiff submits that the record did not support the ALJ's and Magistrate Judge Pepe's finding that Plaintiff's seizures are caused by his continued alcohol consumption, as opposed to prior abuse resulting in physical changes effecting his central nervous system. According to Plaintiff, there is no medical finding confirming his continued alcohol consumption.

Objection 1:

In his opinion, the ALJ considered Dr. Khatter's evaluations of Plaintiff in March and April 2000. (A.R. at 21-22.) On March 20, 2000, Dr. Khatter completed an evaluation in which he remarked that Plaintiff "admits to having six to eight beers per day

[5]The ALJ determined that considering Plaintiff's age, educational background, work experience, and residual functional capacity, he is capable of a range of unskilled light exertion work activity (although not the full range). (A.R. at 28 & 32.) The ALJ further concluded that there are a significant number of jobs in the national economy that Plaintiff can perform based on his exertional and non-exertional limitations. (*Id*.) The ALJ therefore concluded that Plaintiff is not under a "disability" as defined in the Social Security Act. (*Id*.) Magistrate Judge Pepe found substantial evidence on the record to support this finding. *See* R&R at 10.

after work." (A.R. at 187.) Although Dr. Khatter further wrote that Plaintiff indicated that "[h]e has been drinking much less recently . . ." (*Id.*) Dr. Katter's impression of Plaintiff on that date was that his condition "may have been masked when [he] was drinking more heavily, or which could potentially be an ongoing withdrawal phenomena." (A.R. at 189.)

The Administrative Record also contains several letters written by Dr. Khatter on April 25, 2000. In one letter, Dr. Khatter states that Plaintiff stopped alcohol for the last two plus months. (A.R. at 192.) In a second letter, Dr. Khatter writes that Plaintiff "has completely remained off of alcohol for the last three months." (A.R. at 193.) Yet in a third letter, Dr. Khatter indicates that Plaintiff "has discontinued alcohol for the last approximately four to five weeks." (A.R. at 194.) Dr. Khatter further states in this letter that he expects the duration of Plaintiff's disability should be temporary . . ." and that within three months or less, Plaintiff "should be able to rejoin gainful employment." (*Id.*)

The ALJ did not discredit or disregard Dr. Khatter's medical opinion, but did find Dr. Khatter's statements regarding Plaintiff's discontinued use of alcohol unreliable. As the ALJ stated, he believed Dr. Khatter had been misled by Plaintiff. (A.R. at 26.) This Court finds substantial evidence in the record to support this conclusion, as prior records reflect Plaintiff's evasiveness and dishonesty regarding his alcohol use when questioned by medical staff. For example, Plaintiff denied daily alcohol use upon admission to the Scottsdale Healthcare Osborn Medical Center (A.R. at 423); however he subsequently acknowledged during his admission that he consumed two to three beers each day. (A.R.

at 426.) Notably, friends at Plaintiff's bedside volunteered to a physician that Plaintiff in fact drinks more than he admitted. (*Id*.) In early February 2000, Plaintiff informed a physician at the Dessert Samaritan Medical Center that he drinks alcohol intermittently, thereby contradicting Dr. Khatter's assertion in mid-April 2000, that Plaintiff stopped drinking four months earlier. (A.R. at 168.) Finally, even Dr. Khatter opined that Plaintiff's seizures may be alcohol related. (A.R. 189).

Objection #2:

Dr. Iqbal testified that in his medical opinion, based on his assessment of the total medical records, particularly the EEGs dated February 19, 2001 and April 2003, that Plaintiff met the Listing of Impairment category 12.09I when evaluated in conjunction with the Listing of Impairment category 11.02A. (A.R. at 24.) The ALJ in fact relied on Dr. Iqbal's assessment to conclude that Plaintiff would meet those Listings; however, the ALJ also was required to consider whether Plaintiff's use of alcohol was a contributing factor material to his impairment. (A.R. at 25.) The Court therefore finds no merit to Plaintiff's objection.

Objection #3:

The ALJ specifically concluded that, although severe, Plaintiff's seizure disorder would not meet any listed impairment if Plaintiff stopping using alcoholic beverages:

> The credible evidence in this case demonstrates that had claimant complied with his medically recommended treatment plan, including both taking his medications and abstaining from alcohol beverage use, the frequency and severity of his seizures would likely be diminished if not entirely eliminated.

(A.R. 26.) There is substantial evidence in the record, including Plaintiff's own statement to treating physicians (despite his contemporaneous, inconsistent statements asserting abstinence), indicating that he in fact was consuming alcohol when he experienced seizures in early 2000 and in 2002, and that his seizures were induced by alcohol abuse and/or withdrawal. For example, in April 2000, Dr. Khatter reported that Plaintiff's seizures were thought to be alcohol related. (A.R. 194.) Although Dr. Khatter made note of the fact that the seizures continued despite Plaintiff's discontinued use of alcohol, he added that he expected Plaintiff's condition to improve "[o]nce we have had control for a period of three months . . ." (*Id.*) While the evidence indicates that Plaintiff was consuming less alcohol in 2002 than 2000, the Court agrees with Magistrate Judge Pepe's analysis that a reasonable mind could accept that his continued use of alcohol– albeit less use– was a material factor in Plaintiff's continued seizure disorder. The Court finds it notable that as the frequency of Plaintiff's consumption of alcohol diminished, so too did the frequency of his seizures. (A.R. at 485-86.)

Summary

The Court concludes that there was substantial evidence in the record to support the ALJ's evaluation of Plaintiff's impairments. The Court therefore affirms the decision of the Commissioner, finding that Plaintiff is not disabled within the meaning of the Social Security Act.

Accordingly,

IT IS ORDERED, that Plaintiff's motion for summary judgment is **DENIED**; and

IT IS FURTHER ORDERED, that Defendant's motion for summary judgment is **GRANTED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
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